

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

JEFF SCHMIDT,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 04:3774 (AW)
)	
AMERICAN INSTITUTE OF PHYSICS,)	Judge Alexander Williams
)	
Defendant.)	
)	
)	

PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and Rule 104 of the Local Rules for the United States District Court for the District of Maryland, plaintiff Dr. Jeff Schmidt requests that defendant American Institute of Physics (“AIP”) produce the documents specified below for inspection and copying at the offices of Howrey Simon Arnold & White, LLP, 1299 Pennsylvania Avenue, N.W., Washington, D.C., 20004, within thirty (30) days after service of this Request, or in such other manner or time as is agreed upon mutually by the parties.

DEFINITIONS AND INSTRUCTIONS

1. Unless otherwise specifically indicated, the term “plaintiff” shall mean Dr. Jeff Schmidt.
2. The terms “American Institute of Physics,” “AIP,” “defendant,” “you” and “your” shall mean and refer to the defendant American Institute of Physics, its affiliates, subsidiaries, divisions and other organizations or operating units, their predecessors and successors in interest, each of their governing board members, directors, officers, agents, employees, auditors, accountants, attorneys (except where material is privileged), advisory committee members or

representatives and all other persons acting or purporting to act on its behalf including, but not limited to, Physics Today.

3. The term "person" shall mean any individual, partnership, firm, association, corporation, holding company, trust or other business or any government or other legal entity, and each of its directors, officers, employees, servants or representatives and all other persons purporting to act on its behalf.

4. The terms "document" and "documents" shall be as defined in Rule 34 of the Federal Rules of Civil Procedure and shall include, without limitation, writings, drawings, graphs, charts, photographs, phonorecords, computer files, e-mail and other data compilation from which information can be obtained, including any back-up e-mails, files or documents. Any such document bearing on any page thereof any marks such as initials, stamped indices, comments or notations of any character and not part of the signed text or photographic reproduction thereof is to be considered and produced as a separate document.

5. The terms "refer to" and "relate to" shall each mean refers to, relates to, constitutes, comprises, contains, consists of, sets forth, proposes, shows, discloses, describes, discusses, explains, evidences, summarizes, concerns, is relevant to, reflects, implies or authorizes directly or indirectly.

6. The term "compensation" shall mean base salary or wages, plus any merit increases, any other bonuses, overtime pay or other monetary benefits.

7. For purposes of interpreting or construing the scope of these document requests, the terms used shall be given their most expansive and inclusive interpretation unless otherwise specifically limited in the document request itself. This includes, without limitation, the following:

- a. Construing the words "and" or "or" used in any documents requested in the disjunctive or conjunctive, as necessary, to make the document request more inclusive;

- b. Construing the words "any" or "all" used in any document request to mean "any and all," as necessary, to make the document request more inclusive;
- c. Construing the singular form of any word to include the plural and the plural form to include the singular;
- d. Construing the past tense of a verb to include the present tense and the present tense to include the past tense; and
- e. Construing the masculine form to include the feminine form.

8. Where a document is requested, the request includes documents in your possession, custody or control or in the possession, custody or control of your present or former employees, representatives, agents, parent or subsidiary companies, and persons consulted concerning any factual matters or matters of opinion, or otherwise available to you, unless privileged or otherwise protected under the Federal Rules of Civil Procedure.

9. If you contend that you are entitled to withhold from production the whole or any part of any documents requested on the basis of the attorney-client privilege, the work-product doctrine, or other grounds, then for each such document: (i) describe the nature of the document (*e.g.*, letter or memorandum); (ii) state the date of the document; (iii) identify the persons and titles of persons who prepared, sent and received the original or a copy of the document and who now have possession, care, custody or control of the original and any copies thereof; (iv) state the subject matter of the document; and (v) state the basis on which you contend you are entitled to withhold the document from production.

10. If an objection is made to any document request, all documents covered by that request but not subject to the objection should be produced.

11. Documents should be produced as they are kept in the usual course of business, and should include a copy of any file folder in which they are kept. Otherwise, documents shall be organized and labeled to correspond with the categories in these requests.

12. Unless otherwise limited in individual requests, this Document Request shall be construed to seek all documents created or edited during the period January 1, 1990 to present and all policies or manuals in effect during this period.

DOCUMENT REQUESTS

1. All documents referring or relating to evaluations and/or the performance of Jeff Schmidt, the quality of his work, and any disciplinary actions proposed, contemplated and/or undertaken relating to Jeff Schmidt including, but not limited to, Jeff Schmidt's personnel files and the termination of his employment with AIP. This request includes any documents relating to evaluations or the performance of Jeff Schmidt maintained in the files of Dr. Schmidt's supervisors, bosses or co-workers.

2. All correspondence from or to the University of Maryland or other persons or organizations including, but not limited to, organizations of physicists, relating to the writing or publication of Jeff Schmidt's book, *Disciplined Minds*, or the termination of Jeff Schmidt's employment with AIP.

3. All documents referring or relating to Jeff Schmidt's appeal of his 1998 performance review including, but not limited to, any management-level discussions relating to whether or not to fire Dr. Schmidt after he showed the appeal papers to any co-workers.

4. All documents referring or relating to evaluations and/or the job performance, quality of work, work place activities, compensation, work requirements and any disciplinary actions proposed, contemplated and/or undertaken for the following individuals: Bertram M. Schwarzschild, Jean Kumagai, Toni Feder and Paul Elliott.

5. All documents referring or relating to any corporate, business, academic or associational relationship that AIP or Physics Today has, directly or indirectly, with the University of Maryland including, but not limited to, the affiliation agreement referred to in the letter attached as Exhibit A.

6. All documents referring or relating to any diversity, equal opportunity or affirmative action training proposed, contemplated or offered by AIP to any of its employees.

7. All documents referring or relating to all persons applying for positions at AIP including, but not limited to, the number of applicants by race, gender, religious affiliation, national origin, sexual orientation or other demographic category and the disposition of their applications as reflected in documents including, but not limited to, interview notes, summaries, evaluations, employment applications and/or letters or documents relating to offering employment at AIP or rejecting an application for employment.

8. All documents referring or relating to the qualifications required or considered for AIP employees including, but not limited to, the position of staff editor at Physics Today.

9. All documents referring or relating to internal or external reports relating to diversity or equal opportunity practices of AIP or information submitted to the federal government or any other person or entity referring or relating to the diversity or equal employment opportunity practices of AIP including, but not limited to, the 1996 Affirmative Action Program for American Institute of Physics and all documents relating to the July 11, 1996, memorandum from Melinda Underwood to Theresa C. Braun detailing female and minority utilization at AIP.

10. All documents referring or relating to AIP's or Physics Today's policies on staff writings or publications including, but not limited to, all documents related to AIP's policy regarding AIP employees writing (*i.e.* articles or books) for organizations, persons or other entities other than AIP.

11. All versions of AIP's and Physics Today's employee handbooks or manuals that were in effect for the period 1981 to present.

12. All documents referring or relating to employee job security issues including, but not limited to, the proposed agenda for the two-day retreat scheduled for November 19-20, 1996, the November 17, 1996 statement by Stephen Benka regarding job security and the October 15, 1997 statement from Charles Harris to Physics Today staff in which Mr. Harris stated that "the

staff should be free to engage in constructive criticism and discussion without fear of retribution.”

13. All documents referring or relating to employee concerns about the diversity of the AIP and Physics Today staff including, but not limited to, the proposed agenda for the two-day retreat scheduled on or about November 19-20, 1996.

14. All documents referring or relating to AIP or Physics Today’s proposed, contemplated or actual decision to recruit and or not recruit minority and/or women employees.

15. All documents referring or relating to AIP’s computer use policy including, but not limited to, the memorandum from Marc H. Brodsky on or about June 18, 1998 regarding the policy.

16. All documents referring or relating to AIP or Physics Today’s policy regarding carrying over unused vacation time to a subsequent year including, but not limited to, management’s decision to permit Paul Elliott to carry over to the year 2000 his unused 1999 vacation time and the decision not to permit Dr. Schmidt to carry over his vacation time for that same period.

17. All documents referring or relating to the investigation by the State of Maryland Department of Labor Unemployment Office into unemployment benefits for Jeff Schmidt including, but not limited to, all hearing notes.

18. All documents referring or relating to the Prince George’s County and/or EEOC’s investigation into the firing of Jeff Schmidt.

19. All documents referring or relating to employee break periods during regular working hours.

20. All documents referring or relating to Jeff Schmidt’s book *Disciplined Minds*.

21. All documents referring or relating to the regulation of employee communication during or after regular working hours including, but not limited to, “gag orders” and AIP’s ability, right or proposed, contemplated or actual decision to monitor workplace conversations, communications and/or activity.

22. All documents referring or relating to any of Jeff Schmidt's public statements or appearances including, but not limited to, Dr. Schmidt's speech in or about January 2004 at the annual meeting of the American Association of Physics Teachers and documents relating to Marc Brodsky's proposed, contemplated or actual efforts or attempts to have the American Association of Physics Teachers cancel, abbreviate or otherwise alter Dr. Schmidt's speech.

23. All documents referring or relating to how work is assigned or distributed at *Physics Today*, including, but not limited to, AIP's decision to allow employees to work from their homes.

24. All documents referring or relating to employee salaries or compensation including, but not limited to, any salary differentials between minority or women personnel, and non-minority or non-female employees and AIP's decision to award Jean Kumagai a salary increase effective on or about June 1, 1997.

25. All documents referring or relating to Jeff Schmidt's activities relating to employee diversity at Physics Today.

26. All documents referring or relating to AIP's decision to change Jeff Schmidt's job responsibilities and decrease his editing quota in or around August 1997.

27. All documents referring or relating to Stephen G. Benka's performance as a manager including, but not limited to, documents showing that AIP required, encouraged and or paid for him to take management or other training classes, and documents relating to his management style or treatment of AIP staff members.

28. All documents referring or relating to the management and/or monitoring of Jeff Schmidt and his work place activities by supervisors, bosses, superiors or management-level AIP employees.

Respectfully submitted,



Patricia G. Butler (#012844)
Erik T. Koons (application pending)
Chad R. Murchison (#016293)
HOWREY SIMON ARNOLD & WHITE, LLP.
1299 Pennsylvania Ave., N.W.
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(202) 783-0800

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Washington Lawyers' Committee for Civil
Rights and Urban Affairs
11 Dupont Circle, NW Suite 400
Washington, DC 20036
(202) 319-1000

Dated: February 24, 2005

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing First Set of Requests for Production of Documents was served *via* facsimile and U.S. Mail on February 24, 2005 upon the following:

Teresa Burke Wright
Jackson Lewis LLP
8614 Westwood Center Drive, Suite 950
Vienna, VA 22182
Phone: (703) 821-2189
Facsimile: (703) 821-2267



Erik T. Koons

EXHIBIT A



2101 Main Administration Building
College Park, Maryland 20742
301.405.4945 TEL 301.314.9395 FAX

July 17, 2001

Jeff Smith
3003 Van Ness Street, N.W.
Apartment 406
Washington, D.C. 20008

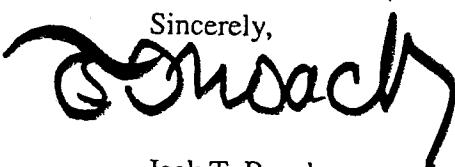
Dear Mr. Smith:

We are in receipt of your letter of July 1, 2001, to Dr. Ann G. Wylie, Assistant President. Because you invoke the Maryland Public Information Act (the "MPIA"), it has been forwarded to this Office for consideration and reply.

You have asked for "the agreement that the university negotiated with the American Center for Physics." We are unable to locate a fully executed copy of the *Relationship and Cooperation between American Center for Physics and University of Maryland, College Park* as the document is known. However, we have been able to retrieve a final draft dated November 17, 1993. It is my understanding that there were no substantive changes made to it. A copy is enclosed.

You have also requested a "complete list of university affiliates." As you may appreciate, the MPIA does not require the University to generate new material. And to the best of our knowledge, a list of "affiliates" has never been attempted. In large measure this reflects the imprecise and varied way the word "Affiliate" or "affiliated" has come to be used in faculty parlance. We remain prepared, however, to offer you copies of other agreements if you might describe them with sufficient particularity to enable us to more readily identify them.

We trust this responds fairly to your inquiry.

Sincerely,
A handwritten signature in black ink that appears to read "Roach".

Jack T. Roach
Executive Assistant to the
President & Chief Counsel

cc: Dr. Ann G. Wylie

file

Draft proposal, ver 0.4
AH, Nov. 17, 1993

Proposed
Oct 2001-2003
Prop 125

RELATIONSHIP AND COOPERATION
between
AMERICAN CENTER FOR PHYSICS and UNIVERSITY OF MARYLAND, COLLEGE PARK

0. Premise

The proximity of the newly opened American Center for Physics and the University of Maryland at College Park offers an opportunity for sharing resources and expertise in a way that benefits both institutions and the science community. The prospect of synergy between the Physics Department and individual physics organizations that comprise ACP was, after all, an important factor in the decision to locate ACP in Maryland.

This document attempts to define a framework for collaboration between ACP and UMCP. It is based on prior discussion between the two groups and the agreements reached verbally to date.

1. Representation of ACP and UMCP

The ACP Board is comprised of two representatives of each of the Member Organizations: Marc Brodsky and Arthur Bent for AIP, Harry Lustig and Irving Lerch for APS, and Bernard Khouri and Robert Sears for AAPT. Sal Trofi (previously also Christopher Marshall) from AAPM, an Affiliate Member of ACP, attends the Board meetings as a non-voting participant. A subgroup of the ACP Board, composed of one person from each member organization, will continue to represent ACP in contacts with UMCP.

In recent formal and informal discussions, ACP was represented by Kenneth Ford, former Executive Director of AIP, Harry Lustig, and Bernard Khouri. The following people from the University of Maryland have participated at various times: Richard Herman, Dean of the College of Computer, Mathematical, and Physical Sciences; Bruce Fretz, Associate Vice President of Academic Affairs; Brian Darmody, Assistant to the President at UMCP. The Physics Department has been represented in these talks by: Chuan Liu, acting Chair, Angelo Bardasis, Associate Chair, John Layman, and Pam Harris of educational/outreach programs.

2. Summary of early discussions

The ACP Board and its individual members have met on a number of occasions with the UM administration officials and representatives of the physics department. It was agreed in principle that:

- (a) Staff of ACP will receive identification cards, allowing access to College Park campus facilities such as are used by the full time staff at UMCP, including access to libraries (with some restrictions on borrowing books) and the campus shuttle system.
- (b) Some physicists on the staff at AIP, APS, AAPT, and AAPM may be offered adjunct or visiting faculty status at the Physics Department. The number of these appointments will be limited and they will be handled on a case by case basis. ACP suggested for consideration thus far the following people: Marc Brodsky, Jack Hehn, Bernard Khoury, Irving Lerch, Harry Lustig, John Rigden, and Spencer Weart.

A more detailed summary of prior discussions is given in the June 29 draft prepared by Bernard Khoury.

3. ACP services to UMCP

The following are preliminary suggestions of the services that ACP may offer to the UMCP faculty.

- (a) Niels Bohr Library. Access to the stacks and access to the archives for scholarly purposes. Copying services, free loan of copies of interviews on tapes and microfilms. Employment opportunities for students and graduate students.
- (b) Student Internships and faculty fellowships. Possibility of internship in archival and library science, in history of science, in science writing and editing, in science policy and management (including Physics Management Fellow position at AIP). Also fellowships for faculty in these areas. ACP may also be able to offer postdoctoral positions.
- (c) ACP publications and information. Distribution to interested faculty members of any of the following: FYI (e-mail), Physics News Update (e-mail), History of Physics Newsletter, brochures from the Education and Employment Statistics. Also access to information and advice on employment opportunities for physicists.

- (d) PINET. Limited number of free access accounts to the PINET database and services. Unlimited paid access.
- (e) Conference facility. Limited use of ACP conference rooms and facilities.

4. UMCP services to ACP

The following are preliminary suggestions of the services that the University and the Physics Department may offer to ACP staff.

- (a) Temporary staff id cards. For interested professional full-time staff at ACP. The id cards will allow access to university and departmental libraries (limited borrowing privileges and access to stacks, at least for some ACP staff), shuttle system, and other services available to UMCP staff.
- (b) Adjunct/visiting faculty positions. The Physics Department may offer a limited number of appointments to physicists in ACP, some of them on a rotating basis in connection with teaching assignments. ACP will forward a list of people interested in these positions.
- (c) University publications. University newspaper(s) and departmental newsletters, announcements of colloquia talks, etc., distributed in hard copy and/or via e-mail in limited number to ACP. Several copies of the university catalogue and listings of courses offered sent to Niels Bohr Library each semester.
- (d) UMCP computing facilities. Access to computing services and on-line data-base to selected ACP scientists for research.
- (e) University and departmental lectures and colloquia. Open to all interested staff members at ACP.
- (f) ACP bus stop. Extension of the university shuttle system so that there is a regular ACP bus stop. This will facilitate contacts between the two communities.

5. Future

The details of the proposed procedures will be worked out and modified as needed. ACP and UMCP will seek to maximize the benefits to both sides through collaboration, joint projects, and good neighborly interaction.

Send copy



1299 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20004-2402
PHONE 202.783.0800
FAX 202.383.6610
A LIMITED LIABILITY PARTNERSHIP

DIRECT DIAL 202.383.6676

February 24, 2005

VIA FACSIMILE AND U.S. MAIL

Ms. Teresa Burke Wright
Jackson Lewis, LLP
8614 Westwood Center Drive, Suite 950
Vienna, VA 22182

Re: Schmidt v. AIP

Dear Teresa:

Enclosed please Plaintiff's First Set of Requests for Production of Documents. Please contact me at your convenience if you have any questions.

Respectfully,



Erik T. Koons

Enclosure